

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION**

DEANNA KAY SIMON KIDWELL,

Plaintiff,

vs.

PUBLIC DEFENDER COURT
ORDERED MATT MCKITTRICK,

Defendant.

CV-14-92-GF-BMM

ORDER

Plaintiff Deanna Kay Simon Kidwell (Kidwell) filed a Complaint on December 8, 2014. She alleges that her public defender violated her civil rights during his representation of her in criminal proceedings. She asserts claims under 42 U.S.C. § 1983. Kidwell also has filed a motion to proceed in forma pauperis. Kidwell is proceeding pro se.

United States Magistrate Judge Keith Strong entered Findings and Recommendations in this matter on December 16, 2014. (Doc. 5). Judge Strong recommended that the Complaint be dismissed because it failed to state a claim under § 1983. Judge Strong recommended that the motion to proceed in forma pauperis be denied because the claims asserted in this action were frivolous. (Doc. 5 at 2-3). Kidwell did not file objections to Judge Strong's Findings and Recommendations.

The Court has reviewed Judge Strong's Findings and Recommendations for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). The Court finds no error in Judge Strong's Findings and Recommendations, and adopts them in full. To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two elements: 1) that a right secured by the Constitution or laws of the United States was violated, and 2) that the alleged violation was committed by a person acting under color of state law. *See West v. Atkins*, 487 U.S. 42, 48 (1988). Public defenders do not act "under color of state law" when performing traditional lawyer duties. *Polk County v. Dodson*, 454 U.S. 312, 325 (1981). Dismissal of the Complaint is appropriate.

Given that the claims asserted in the Complaint are frivolous, it is proper to deny the motion to proceed in forma pauperis. *See Tripathi v. First Nat'l Bank & Trust*, 821 F.2d 1368, 1370 (9th Cir. 1987) (A court "may deny leave to proceed in forma pauperis . . . if it appears from the face of the proposed complaint that the action is frivolous or without merit.").

Accordingly, IT IS HEREBY ORDERED:

1. Plaintiff's Motion to Proceed In Forma Pauperis (Docs. 1 and 6) is DENIED.
2. Plaintiff's Complaint (Doc. 2) is DISMISSED with prejudice.

3. The Clerk is directed to enter judgment accordingly.

DATED this 10th day of February, 2015.



Brian Morris
United States District Court Judge